

Vehicles: Street car is "vehicle" and street car's failure to yield right of way held to justify a finding of its negligence

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The writer can find but one Wisconsin case dealing with the question whether an injunction will issue against police officers. In that case the injunction was refused.¹⁰ The case is not in point on the proposition discussed because the injunction was asked to restrain the police from arresting the plaintiff illegally and injuring his property. There is no question but that an injunction will never issue to prevent the police from making an arrest.

Four courts have held that an injunction lies to prevent police officers from committing illegal acts.¹¹ All of these were cases where the police officers were enjoined from committing trespasses upon property without lawful authority or any adequate reason or from searching or seizing property or arresting persons with absolutely no authority of law and without a warrant. It is hard to distinguish some of the New York cases from *Delany v. Flood*, but they all present a much stronger ground for an injunction; in fact, in all the cases the equity was very strong in favor of the plaintiff.

As a practical proposition it may be stated that the courts will generally look with disfavor upon any petition for an injunction against police officers, and one should have a very strong equitable claim for relief before attempting to secure such an injunction.

EVERETT P. DOYLE.

Vehicles: Street car is "vehicle" and street car's failure to yield right of way held to justify a finding of its negligence.—It is undisputed that where both street railways and automobilists have the right to use the public streets, the rights of each must be exercised with due regard to the rights of the other and that such right must be exercised in a reasonable and careful manner so as not to abridge or interfere unreasonably with the right of the other.

That "the law of the road with reference to vehicles approaching at street intersections" applies equally to street cars as well as to all other vehicles was recently decided by the Supreme Court of Minnesota in the case of *Bradley v. Minneapolis Street R. R. Co.*, 201 N. W. 606 (Minn.). The plaintiff in that case was seriously injured when the automobile in which he was driving was struck by defendant's street car at a street intersection. The court did not hesitate to pronounce the defendant negligent by reason of the failure of its motorman to apply

¹⁰ *Gaertner v. City of Fond du Lac*, 34 Wis. 497.

¹¹ *American Steel Co. v. Davis*, 261 Fed. 800; *Kearney v. Laird*, 164 Mo. A. 406, 144 S.W. 904; *Rosenberg v. Sheen*, 77 N.J. Eq. 476, 77 A. 1019; *Constantine v. N.Y. City*, 116 Misc. 349, 190 N.Y. Supp. 372; *Hale v. Burns*, 101 Appl. Div. 101, 91 N.Y. Supp. 929; *Dinsmore v. N.Y. Bd. of Police*, Abb. N. Cas. (N.Y.) 436; *Adams Expr. Co. v. N.Y. Bd. of Police*, 65 How Pr. (N.Y.) 72; *Burns v. McAdoo*, 113 App. Div. 165, 99 N.Y. Supp. 51; *Hagan v. McAdoo*, 113 App. Div. 506, 99 N.Y. Supp. 255; *Levy v. Bingham*, 113 App. Div. 424, 99 N.Y. Supp. 258; *McGorie v. McAdoo*, 113 App. Div. 271, 99 N.Y. Supp. 47; *Hale v. Burns*, 101 App. Div. 101, 91 N.Y. Supp. 929; *Fairmount Athletic Club v. Bingham*, 61 Misc. 419, 113 N.Y. Supp. 905; *Cullen v. Bourke*, 93 N.Y. Supp. 1085.

the law of the road in not allowing the plaintiff who was approaching from the right, the right of way at the intersection.

The contention of the defendant company was that a street car was not a "vehicle" within the tenor of the law of the road as applied to vehicles at street intersections. While a vehicle has been defined to include every description of carriage or other artificial contrivance used or capable of being used as a means of transportation on land,¹ nevertheless, in a number of cases the word has been held not to include street cars.² But, on examining the various statutes construed in these cases, it becomes apparent that street cars were not so embraced, principally because the statutes under construction, either expressly or by clear implication, excluded them.

However, in examining the entire act of the law of the road, which is practically identical among the various states,³ and ascertaining the sense which the legislators have attached to the word vehicle throughout, it immediately becomes apparent that this word sometimes is incapable of including street cars. These acts require vehicles meeting upon a highway to turn to the right, and that a vehicle overtaking another shall pass to the left, etc.—regulations very difficult, if not entirely impossible to be complied with by the driver of a street car. Yet, notwithstanding the fact that the word "vehicle," as defined in these sections, is clearly inapplicable to street cars, the courts do not seem to hesitate in holding that the word "vehicle" in the traffic law, has a dual significance and was intended to include street cars along with all other means of conveyance.⁴

From a practicable viewpoint, however, it would seem that both convenience and expediency would be better served in granting street cars an exemption from the meaning of this word "vehicle," by giving them a superior right in reference to other vehicles at street intersections. Primarily, street cars are not operated either for the purpose of enjoyment or for pleasure. Their advantages are enjoyed chiefly by our large working class of people as a means of going to and from their place of work, and it does not seem reasonable to subordinate the rights of the many aboard a crowded street car to those of the few or perhaps one in an ordinary vehicle on the highway.

Whether or not our court would follow the holding of the Minnesota case is purely conjectural. It has held that "the law of the road" applies to all vehicles,⁵ but it has not as yet been called upon to determine whether or not a street car is such a vehicle within the meaning of the statute.

J. R. GRENFELL.

¹ *Words and Phrases*, Vol. 8, p. 248.

² *Whitaker v. Eighth Ave. R. R. Co.*, 51 N.Y. 290.

³ *Reed v. Public Service R. R. Co.*, 99 Atl. 100 (N.J.).

⁴ *Syck v. Duluth Street R. R. Co.*, 177 N.W. 944 (Minn.).

⁵ *Lloyd v. Pugh*, 158 Wis. 441, 149 N.W. 150.